

ALASKA PIONEER HOME		P&P No: 09.02
Title: False Claims Act		Approval: D. COTE
Key Words: Medicare, Medicaid, Fraud, Whistle Blower		
Team: All Employees	Effective Date: 8/1/12	Page: 1 of 4

PURPOSE

To provide information about the False Claims Act for Alaska Pioneer Home (AKPH) employees and fulfill the federal requirement for a policy.

POLICY

AKPH participates in the federal Medicaid program and complies with the federal False Claims Act (FCA).

AKPH employees are informed about the FCA during orientation and annual training.

AKPH employees are vigilant in maintaining the FCA purpose, which is to detect and prevent fraud, waste, and abuse.

AKPH employees have access to the FCA policy at all times.

DEFINITIONS

Claim is a demand for payment.

False claim is a demand for payment for a service that is not reasonable or necessary.

Fraud is dishonesty calculated for advantage. One party knowingly deceives another party to gain unauthorized benefit.

Knowingly occurs when a person knows the information, acts in ignorance of the truth, or acts in reckless disregard of the truth.

Qui tam is a court order whereby a private individual may share in a percentage of the proceeds from an FCA action or settlement.

Qui Tam Action is brought by a party against an entity that is using fraud (filing a false claim) to collect money from the United States government.

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Whistle blower is a person who tells the public or someone in authority about dishonest or illegal activities occurring in a government department, public or private organization, or company.

PROCEDURE

I. False Claims Act (FCA),

- A. The FCA imposes liability on persons who submit claims to the federal government that they know, or should know, are false.
 1. The FCA is the federal government's primary civil remedy for improper or fraudulent claims.
 2. The FCA is federal law number 31 USC §§3729-3733.
- B. The FCA covers false claims from people who:
 1. Intentionally misrepresent the facts,
 2. Are ignorant of the facts, or
 3. Have reckless conduct and do not check the facts.
- C. The FCA applies to the submission of claims by health care providers for payment by Medicare, Medicaid, and other federal and state health care programs.
 1. Submitting false claim requests for payment include:
 - a. Billing for items or services that are not necessary.
 - b. Submitting bills without supporting clinical documentation.
 - c. Submitting claims for items or services that were not provided.
 - d. Duplicate billing for items or services.
 - e. Inaccurate code or resident status to increase reimbursement.
 - f. Failing to identify and refund credit balances.
 - g. False records.
- D. The FCA states that the perpetrator is liable to the United States government for a civil penalty and damages.
 1. The penalty is not less than \$5,000 and not more than \$10,000, *and includes* a sum of three times the amount of damages which the government sustained due to the act.

II. Whistle Blower Provision

- A. Federal and state FCA have been effective in fighting fraud because citizen whistle blowers are encouraged to file a lawsuit in the name of taxpayers.
 1. The lawsuits are known as qui tam lawsuits.

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2. Qui tam allows citizens (whistle blowers) with evidence of fraud against the government, to sue on behalf of the government, in order to recover the stolen funds.
3. Whistle blowers are rewarded for their efforts by receiving a monetary portion of the final settlement against the perpetrator of the fraud.

B. Protection for the whistle blower

1. The FCA provides protection from the employer when a qui tam lawsuit is filed.
2. Retaliation protection is given to the employee who is:
 - a. Discharged
 - b. Demoted
 - c. Suspended
 - d. Threatened
 - e. Harassed
 - f. Discriminated in terms of employment

III. The FCA and the Alaska Pioneer Homes

- A. The Act allows an AKPH employee who discovers fraudulent receipt of funds from the government to report the fraud and file a qui tam lawsuit.
 1. The purpose of the qui tam lawsuit is to recover the funds paid by the government as a result of the false claims.
 2. If the lawsuit is successful, the AKPH whistle blower that initiated the suit may be awarded a percentage of the funds recovered.
 3. The FCA empowers AKPH employees to correct wrongful Medicaid and Medicare billing or refusal of services.
 4. If an AKPH employee observes or suspects that certain activity may contribute to the submission of a false claim, the activity must be reported to the AKPH division director.
 - a. AKPH employees are required to report any possible fraud, waste, or abuse to the division director as soon as the situation is apparent.
 5. The AKPH employee who reports the false claim is protected and cannot be retaliated against in accordance with the FCA.
 - a. The FCA provides protection to the AKPH employee who is terminated, demoted, threatened, harassed, or discriminated against by the employer due to the employee's investigation, filing a suit, or participating in a qui tam action.
- B. FCA violations that are not permitted by the AKPH pharmacy:
 1. Partial fill of a prescription charged as if a full prescription was provided.

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2. Kickback to a medical provider to induce the provider to prescribe certain drugs.
 3. Medications, drugs, or treatment that is not necessary.
 4. Charges to Medicare or Medicaid residents that are at a higher rate than others for the same prescription.
 5. Provision of products or services that are known to be defective.
 6. False diagnosis to a more severe disease (up coding) so the resident requires more expensive drug therapy or treatment.
 - a. *Up coding* a diagnosis justifies spending more money for a resident's treatment that is not needed.
 7. Changes in residents' prescriptions from one drug to another for kickback or other improper reasons.
 8. False reports about drug research grant information to government agencies.
- C. False claim fraud prevention at AKPH
1. The Deficit Reduction Act (DRA) addresses domestic entitlement programs, including both Medicaid and Medicare.
 2. Under the provisions of the DRA of 2005, Congress directed CMS to increase the resources available to combat fraud, waste, and abuse in the Medicaid program.
 3. The DRA of 2005 states that AKPH employees:
 - a. Must understand the laws regarding false claims, and
 - b. Have a right to report any attempts to defraud the government.

HISTORY OF REVISIONS

New: 1/1/12
 Revised: 3/2/12; 7/20/12
 Reviewed: 3/2/12

ATTACHMENTS

REFERENCES

31 USC §§3729-3733, 42 USC 1305-PL 109-171